

Postponing Annual Town Elections

March 13, 2020

Postponing Town Elections – Lack of Statutory Authority

As the fallout from the coronavirus continues, many municipalities have temporarily closed schools and other public buildings. As we indicated in our previous memorandum on this topic, found here, there are statutory and parliamentary mechanisms to delay or continue town meetings, regardless of whether the date for such meeting is set forth in a charter, special act or bylaw, and regardless of whether the warrant has been posted for such a meeting. Notably, however, no similar statutory mechanism is available to reschedule or postpone annual town elections. A significant number of communities have elections scheduled over the next month or so, and the warrants for some of these elections have already been posted, nominations made, and absentee ballots mailed.

For those of you with elections scheduled in the next several weeks, who are concerned about holding such elections, consideration may be given to seeking relief immediately in the form of a so-called Governor's Bill and/or to take a vote of support for generally applicable legislation or the issuance of an executive order that would allow such elections to be postponed to a later date. Note that the attached models were developed in connection with a request made by the Town of Lincoln to delay its March 30, 2020 election; to the extent that each situation differs, based upon such factors as the date of the election, applicable charter, special act, or bylaw provisions, and the like, any similar request for relief will need to be analyzed on a case by case basis and appropriate changes made to such models to be reflective of the Town's process for requesting such action and any Town facts, such as demographics, that influenced the decision to postpone.

In the event your annual election is ultimately postpone with or without approval, G.L. c.41, §107 provides that all elected officials hold office until their successor is elected and sworn.

The Process for Requesting the Filing of a Governor's Bill

In accord with Section 8 of the Home Rule Amendment to the Massachusetts Constitution, the General Court reserved to itself the ability to pass laws relative to more than one municipality. A municipality may also request the passage of special legislation by vote of its legislative body, with the approval of the mayor if applicable. Additionally, the Home Rule Amendment allows a board of selectmen, by majority vote, to request that the Governor file legislation on behalf of that town. A so-called "Governor's bill" does not require a Town Meeting

vote. While a bill submitted by the Governor must be approved by two-thirds of both houses of the General Court, since such bills are generally of an emergency nature, they are typically acted upon swiftly.

To take advantage of this option, the Board must meet and vote to request special legislation. Note that the recent Order issued by the Governor suspending the application of the Open Meeting Law (“OML”) in certain respects, available [here](#), may make this easier, particularly with respect to convening a remote, rather than physical, meeting. Typically, however, except to the extent altered by the Order, all other aspects of the OML should be complied with, including posting a meeting no less than 48 hours prior to the time of the meeting, excluding Saturdays, Sundays and legal holidays, and listing on the meeting notice, with specificity, those matters which the Chair reasonably anticipates will be discussed. As discussed in our previous memorandum, there are exceptions to the OML for matters that constitute an “emergency”. Whether an emergency meeting would be appropriate under any particular set of circumstances must be analyzed on a case-by-case basis, balancing the possible risks and benefits.

Sample Meeting Notice Items, Special Acts, Votes, and Letter to Governor

In our experience, a request to the Governor to file legislation should include, in addition to the text of the proposed legislation, a letter from the Town’s legislative delegation supporting the proposed legislation and explaining the urgency, which necessitates the Governor’s involvement. A sample of such a letter can be found [here](#). If the Board chooses to pursue this option, we recommend that you contact your legislative delegation as soon as possible to provide notice that it is anticipated that the Board will be taking such action, and to seek whatever assistance might be available.

Please find [here](#) a sample special act seeking authority for the Board to postpone the annual town election.

The Open Meeting Law notice item for such purposes can take a form similar to the following:

Annual Town Election Postponement - Novel Coronavirus Covid-19 –

- 1) Discussion and potential vote of the Board of Selectmen/Select Board to request that the Governor file special legislation on behalf of the Town (i.e., a so-called Governor’s Bill) requesting expedited approval to postpone the Annual Town Election;
- 2) Discussion and potential vote of the Board of Selectmen/Select Board, in consultation with the Town Clerk, to postpone the Annual Town Election in the interests of public health and safety; and
- 3) Discussion and potential vote to support general legislation or executive order authorizing postponement of annual town elections this fiscal year in a form similar to that proposed by the Town.

The Board's vote to request that the Governor file the special legislation may be similar to the following:

Moved: That, whereas the rapidly-evolving public health issues associated with coronavirus Covid-19, including the swift spread of the disease, present lack of containment, and the risk to the most vulnerable populations inherent in public gatherings; whereas various public and private entities, including professional sports leagues, universities, school districts, cultural institutions and events, and more, have been cancelled, closed, or temporarily suspended; whereas the World Health Organization has identified the current crisis as a pandemic; and whereas the Governor has declared a State of Emergency in the Commonwealth, the Town is taking action consistent with recommendations from federal and state agencies and officials to limit the spread of this disease amongst the residents and voters of the Town, its officials and employees, and visitors, including, closing or limiting the use of schools and public buildings, suspending in-person meetings and other gatherings in Town office buildings, and encouraging residents to communicate with Town staff by e-mail and telephone to the extent possible. For all of these reasons, the Board of Selectmen votes to immediately request the Governor to file emergency legislation on behalf of the Town, a so-called "Governor's bill", seeking authorization to delay and reschedule the Annual Town Election to a date to be determined by the Selectmen in consultation with the Town Clerk, Board of Health, and other public safety personnel, and authorizing early voting by mail in connection with such postponed election, provided, further, that all nominations, ballot preparation, absentee voting and the like be ratified, validated and confirmed as though it was undertaken consistent with the date of the postponed election; and, further, if such legislation is not passed prior to the date of scheduled Annual Town Election, to ratify, validate and confirm the Board's vote to postpone the 2020 Annual Town Election; finally, the Board calls upon its legislative delegation to support the filing of this special legislation, and also wishes to provide direction to such delegation that it supports the filing of generally applicable legislation allowing for the postponement of municipal elections this fiscal year.

Finally, we have prepared a draft of possible generally applicable legislation for your Board to also consider supporting [here](#).

As noted, if there is interest in pursuing this route because the Town's election is scheduled to be held within the next several weeks, consideration should be given to taking swift action to start this process.

We will continue to keep you updated on additional developments in the face of this rapidly-evolving pandemic. A reminder that we have established a **Coronavirus "hotline"**, at coronavirusinfo@k-plaw.com. A dedicated team of our attorneys is available through this "hotline" e-mail address to answer the most frequently-asked legal questions arising from COVID-19. One of these designated attorneys will respond promptly to your inquiries. In some instances, you may be referred to your primary, land use, or labor contact, and you should of course feel free to contact these attorney(s) directly with COVID-19 related questions.

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